

Supreme Court of the State of New York
Appellate Division: Second Judicial Department

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_____AD3d_____

Submitted - November 18, 2009

MARK C. DILLON, J.P.
HOWARD MILLER
RANDALL T. ENG
L. PRISCILLA HALL
SANDRA L. SGROI, JJ.

2008-02108

DECISION & ORDER

The People, etc., respondent,
v Anthony Torres, appellant.

(Ind. No. 1415/07)

Stefani Goldin, Melville, N.Y., for appellant.

Kathleen M. Rice, District Attorney, Mineola, N.Y. (Tammy J. Smiley and Cristin N. Connell of counsel), for respondent.

Appeal by the defendant from a judgment of the Supreme Court, Nassau County (Donnino, J.), rendered February 7, 2008, convicting him of criminal sale of a controlled substance in the fourth degree, upon his plea of guilty, and imposing sentence.

ORDERED that the judgment is affirmed.

It is well settled that the right of a defendant to withdraw a previously entered plea of guilty rests within the sound discretion of the sentencing court (*see People v Seeber*, 4 NY3d 780; *People v Mann*, 32 AD3d 865; *People v Kucharczyk*, 15 AD3d 595), and that determination will generally not be disturbed absent an improvident exercise of discretion (*see People v DeLeon*, 40 AD3d 1008). In this case, the record reveals that the defendant entered his plea of guilty knowingly, voluntarily, and intelligently, having reached a favorable plea bargain with the assistance of competent counsel with whose representation the defendant was satisfied (*see People v Mann*, 32 AD3d 865). Furthermore, contrary to the defendant's arguments on appeal, "[a]n attorney assigned to represent a defendant in a criminal case has no duty to participate in a baseless *pro se* motion to withdraw a

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plea of guilty which was voluntarily, knowingly, and intelligently made” (*People v Caple*, 279 AD2d 635, 635; *see People v Rodriguez*, 181 AD2d 643; *People v Glasper*, 151 AD2d 692, 693).

The defendant’s remaining contention is without merit.

DILLON, J.P., MILLER, ENG, HALL and SGROI, JJ., concur.

ENTER:

A handwritten signature in black ink, reading "James Edward Pelzer". The signature is written in a cursive, flowing style.

James Edward Pelzer
Clerk of the Court